

**OPEN RECORDS AND MEETINGS OPINION
2009-O-10**

DATE ISSUED: July 2, 2009

ISSUED TO: Mandan City Commission

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Susan Beehler asking whether the Mandan City Commission violated N.D.C.C. § 44-04-19 by holding a meeting without proper notice.

FACTS PRESENTED

At the July 15, 2008, meeting of the Mandan City Commission ("Commission"), Commissioner Tom Jackson was appointed by Mayor Helbling to chair a committee "to provide solutions and/or recommendations to the Board on the fireworks issue."¹ Commissioner Jackson is the only commissioner on the Fireworks Committee. The other members are Police Chief Bullinger, Fire Chief Nardello, and Rodney Feldner, a citizen of Mandan.

The Fireworks Committee met March 12, March 19, and April 9, 2009. Notices containing the time, date, and location were prepared for each of the meetings. Notices were posted at City Hall and on the Mandan city website. Each notice was filed at the city's administrative offices,² the media were notified and notice was posted at the Mandan Fire Station, where meetings were held, on the day of the meeting.

On April 10, 2009, Susan Beehler e-mailed Jim Neubauer and asked to be provided notice for any meetings of any committee of the City of Mandan.

¹ Minutes, Mandan City Commission, July 15, 2008. Mandan operates under the commission system of government and the head of the commission is the president of the board of city commissioners. N.D.C.C. § 40-09-01. Mayor Helbling has chosen to be identified as "mayor" rather than "president".

² Mandan's city administrator, Jim Neubauer, also serves as the city auditor.

ISSUE

Whether meetings of the Fireworks Committee were noticed in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity.³ The notice for a regular, special, or emergency meeting must include the date, time, and location of the meeting, and all topics the governing body expects to consider.⁴ The notice must be posted at the principal office of the governing body holding the meeting and at the location of the meeting on the day of the meeting.⁵ Topics that may be considered at an emergency or special meeting are limited to those included in the notice.⁶ For emergency or special meetings, the presiding officer of the governing body must assure that notice is given to the public entity's official newspaper, as well as to anyone who has requested notice, at the same time the notice is given to members of the governing body.⁷

Ms. Beehler alleges that the Fireworks Committee held meetings that were not noticed to the public and that she did not receive personal notice of the meetings. According to the Commission, notice of all three meetings were posted at the Mandan City Hall, at the location of the meetings, filed at the city administrator's office⁸, and provided to the official newspaper. In addition, notice was posted on the City of Mandan's webpage.

The Commission agrees that it did not provide personal notice to Ms. Beehler, explaining that at the time of the meetings, Ms. Beehler had not requested to be provided personal notice. Ms. Beehler's request for personal notice of all meetings was not made until April 10, 2009, a day after the last meeting of the Fireworks Committee held on April 9. Thus, the Commission had no obligation to give Ms. Beehler personal notice of meetings that took place before she submitted a request for notice of all meetings.

³ N.D.C.C. § 44-04-20(1); N.D.A.G. 2007-O-02; N.D.A.G. 2004-O-20.

⁴ N.D.C.C. § 44-04-20(2).

⁵ N.D.C.C. § 44-04-20(4).

⁶ N.D.C.C. § 44-04-20(6).

⁷ N.D.C.C. § 44-04-20(6).

⁸ Mandan does not have the traditional position of city auditor, but instead, has city administrator, Jim Neubauer, serves in that capacity. E-mail from Jim Neubauer, City Administrator, to Assistant Attorney General Mary Kae Kelsch (June 26, 2009). Thus, filing notice with the city administrator's office is the equivalent to filing notice with a city auditor.

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Based on the foregoing, it is my opinion that the Commission gave notice of the Fireworks Committee in substantial compliance with N.D.C.C. § 44-04-20.

CONCLUSION

The meetings of the Fireworks Committee were noticed in substantial compliance with N.D.C.C. § 44-04-20.

Wayne Stenehjem
Attorney General

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